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No. 654

In the

Supreme Court of the United States

OCTOBER TERM, 1967

ADAM FARKAS,

Petitioner,

v.

TEXAS INSTRUMENTS INCORPORATED and LING-TEMCO-VOUGHT, INC.,

Respondents.

BRIEF IN OPPOSITION FOR RESPONDENT TEXAS INSTRUMENTS INCORPORATED

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Statement

Throughout the Petition are supposed "factual" assertions which are erroneous and completely without foundation in the record. These need not be belabored here, however—for the facts of this case are fully and accurately stated in the opinion of the court below, reported at 375 F. 2d 629.

Reasons for Denying the Writ

This case presents nothing worthy of review by this Court. It consists only of the claims of a disgruntled dis-

charged employee . . . claims made with unrestrained invective . . . claims which, despite the emotional verbiage of the Petition, plainly have no consequence beyond the particular facts and the immediate parties to this litigation.

The Petitioner—whom Respondent Texas Instruments hired as an engineer in June of 1962 *with full knowledge* that he was a naturalized citizen and a native of Romania (R. 91; Pet. 4, A-23)—claims that he was discriminatorily discharged because of his national origin in May of 1963 (R. 92-93, 106). Petitioner filed a charge to this effect with the appropriate administrative agency, the President's Committee on Equal Employment Opportunity, 26 Fed. Reg. 1977 (1961) (R. 106, 193; Pet. 5). His claim was first investigated and was then rejected by the Committee on November 1, 1963 (R. 106, 113; Pet. 5, A-33).

Over a year later, the Petitioner renewed his charge of discriminatory discharge with the Committee by there asserting, as he does here, that Respondent Texas Instruments had falsified records and submitted false information concerning his discharge to the Committee (R. 113; Pet. 8-9, A-35). Again, his charges were investigated, and again, on May 11, 1965, the Committee rejected them and found that the Petitioner had not been discharged or discriminated against because of his national origin (Pet. 8-9, A-35).

This suit was then filed in the United States District Court for the Northern District of Texas (R. 20-27). By it Pe-

titioner claimed that Respondent Texas Instruments had discriminatorily discharged him and that Respondent Ling-Temco-Vought had discriminatorily refused to hire him because of his national origin, allegedly in violation of Executive Order No. 10925, 26 Fed. Reg. 1977 (1961) (R. 106-07). In addition, Petitioner claimed the two Respondents had, in violation of 42 U.S.C. §§ 1985(2) and (3), engaged in a twofold "conspiracy": to prevent him from securing employment and to cause local law enforcement officers to subject him to "unreasonable and unwarranted surveillance and interrogation" (R. 105, 107-09).

The court of appeals below held that the Petitioner did not state a cause of action upon which relief could be granted on either basis, either § 1985 or Executive Order No. 10925. (375 F. 2d at 632-35.) This decision is manifestly correct. It is not in conflict with other decisions of this Court or with decisions of other courts of appeal. And, most certainly, it does not involve any unsettled or novel question or any critical issue of federal law which would warrant review by this Court.

There was, for example, nothing novel or momentous about the holding below that state action is required for there to be any violation of the Fourteenth Amendment and the statutes, such as 42 U.S.C. § 1985, enacted pursuant to it (375 F. 2d at 634). "This has been the view of the [Supreme] Court from the beginning. * * * It remains the Court's view today."; *United States v. Guest*, 383 U.S. 745,

755 (1966). An original complaint (R. 20), two amended complaints (R. 91, 105), a proposed pretrial order (R. 190), and three briefs (R. 113, 185, 218) were, among other pleadings, filed on behalf of Petitioner in the trial court.[1] Yet, in none of these is there any allegation that a "state" official or agent of any sort—whether the President's Committee (which rejected Petitioner's initial claim of discriminatory discharge and his renewed claim of falsification of information) or the local police officers (who supposedly were caused to subject him to untoward surveillance and interrogation)— were intentional and willful participants in a conspiracy violative of § 1985. Instead, the only "conspiracy" alleged anywhere in the record is that of the two Respondents, both private corporations (see R. 105-07, 195-97, 200, 210);[2] clearly this is not "state action." See, in addition to

[1] Petitioner's request for counsel (Pet. 20), purportedly based upon Gideon v. Wainwright, 372 U.S. 335 (1963), in this—a civil suit instituted by him for the recovery of $280,000 (R. 112)—requires no response. Respondent notes, without comment, however, that the record demonstrates that Petitioner was represented by no less than three separate attorneys in the trial court (R. 80-83, 215-17, 226-28) and that the exhibits to the Petition show that he was represented by still two other attorneys before suit was filed (Pet. A-26, A-30).

[2] Almost immediately after the court of appeals below denied rehearing, Petitioner filed suit in the United States District Court for the District of Massachusetts against the two Respondents (Texas Instruments, Ling-Temco-Vought), the mayor of Dallas, and the federal employee (a Naval officer) who first investigated Petitioner's charges of discriminatory discharge for the President's Committee on Equal Employment Opportunity. The complaint in that suit (Civil Action No. 67-369-M) consists of the present Petition for Writ of Certiorari and its exhibits, only slightly revised. Added, however, are specific charges that the investigating officer "willfully falsified" his report to the Committee and that the Committee itself acted with malice and itself fabricated grounds for denying Petitioner's claims of discriminatory discharge and of falsification of informatiton. This case is presently pending, with the defendants' motions to dismiss and to quash service having been presented to the court.

the cases cited in the opinion below, *Hanna v. Home Ins. Co.*, 281 F. 2d 298 (5th Cir. 1960), cert. denied, 365 U.S. 838 (1961).

Moreover, review is not even sought of the second holding below—i.e., that no cause of action was stated under Executive Order No. 10925, 26 Fed. Reg. 1977 (1961). This is not stated as a "question presented" by the Petition for Certiorari, nor is Executive Order No. 10925 either cited as a regulation involved or printed in the statutory appendix to the Petition. Rules 23(1)(c) and (d). Notwithstanding this, the decision below was plainly correct: the detailed "sanctions and penalties" specified in Executive Order No. 10925 provide the *exclusive* method of enforcement of its antidiscrimination provisions; very clearly, they do not permit an individual to bring a private suit based upon Executive Order No. 10925 after his claims of discrimination have been rejected (here, twice) by the administrative agency. See *Switchmen's Union v. National Mediation Board*, 320 U.S. 297 (1943).

Furthermore, this decision will have absolutely no impact or consequence upon pending or future suits claiming discrimination in hiring, discharge, etc.: the comprehensive Civil Rights Act of 1964, 42 U.S.C. § 2000e-15 —which became effective after this suit was filed and which, in essence, prohibits discrimination with regard to hire or tenure based upon race, color, religion, sex or national origin by any employer engaged in an industry affecting

commerce—expressly authorizes an aggrieved employee to file suit[3] for enforcement of that Act in the federal district court. Beyond doubt, suits claiming discriminatory discharge, refusal to hire, etc., will be based upon this remedial and inclusive statute—the Civil Rights Act of 1964—and not upon Executive Orders.[4] Thus, the holding of the court below regarding Executive Order No. 10925 (just like its decision regarding 42 U.S.C. § 1985) simply has no significance beyond this particular case and the specific facts and parties here involved.

The Petition, therefore, presents only a private dispute—and a petty squabble at that—stemming from fanciful (and previously rejected) claims of the supposed discriminatory discharge of a single employee. No amount of verbiage, however emotional, can convert such a case into one warranting review by this Court.

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[3] If, after a brief period—30 days in most cases—the Equal Employment Opportunity Commission is unable to obtain voluntary compliance with the Act, 42 U.S.C.A. § 2000-5(e) (375 F. 2d at 633, fn. 3).

[4] In fact, Executive Order No. 10925 was superseded and the President's Committee on Equal Employment Opportunity was abolished on September 24, 1965 by Executive Order No. 11246. 30 Fed. Reg. 12319, 12935 (1965); 42 U.S.C.A. § 2000e (1966 Supp.). This new Executive Order, which like its predecessor concerns nondiscrimination provisions required in federal government contracts, does not provide that private civil actions may be based upon violations of such provisions (see 375 F. 2d at 632-33). However, employers contracting with the government will no doubt be "engaged in an industry affecting commerce"—and would thus be subject to private suits for enforcement of the comprehensive antidiscrimination provisions of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000-5(e).

Conclusion

For these reasons, as well as those detailed in the opinion below, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the above Reply Brief were served by United States air mail, postage prepaid, upon the Petitioner Adam Farkas, Pro Se, 83 State Street, Bristol, Rhode Island, on this 19th day of October, 1967.

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